

REMARKS

Overview

These remarks are set forth in response to the Final Office Action. Presently, claims 1-3, 6-7, 9-10 and 19-23 are pending in the Patent Application. Claims 1 and 19 are independent in nature. Claim 8 has been canceled without prejudice. Favorable reconsideration and allowance of the pending claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1 and 9 in order to facilitate prosecution on the merits.

Allowed Claims

Applicant would like to thank the Examiner for indicating the allowability of claims 19-23.

Allowable Subject Matter

Claims 8-10 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant respectfully submits that dependent claim 8 has been canceled and the limitations previously recited, in relevant part, in dependent claim 8 have been incorporated into amended independent 1. Therefore, Applicant respectfully submits that amended independent claim 1, and all claims depending directly or indirectly therefrom, is in condition for allowance.

Claim Rejections – 35 U.S.C. § 112

Claim 1 stands rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the rejection.

Accordingly to the Office Action, the Specification fails to provide support for the limitation “wherein the host device is operative to check for alignment errors among the framed acoustic data based on alignment information.” Applicant respectfully disagrees. Applicant submits that paragraph [0053] of the Specification recited, in relevant part, “Then, at 930, the host can check for alignment errors among the framed data based on alignment information inserted in the data by the client.” Based at least on this teaching, Applicant submits that the above-recited limitation of claim 1 is fully supported by the Specification.

The Office Action further alleges that the Specification does not teach one of originally skill in the art how to make or use Applicant’s claimed invention. Applicant respectfully disagrees and respectfully traverses this rejection.

MPEP § 2163(II)(A) states that there is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed. In other words, a description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the Examiner to rebut this presumption (see MPEP § 2163(III)(A)). Thus, it is the Examiner that must set forth express findings of fact supporting the alleged lack of written description. These findings should:

- (A) Identify the claim limitation at issue; and
- (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of “unpredictability in the art” is not a sufficient reason to support a rejection for lack of adequate written description.

In the Office Action, the Examiner provided general allegations that the specification as originally filed does not teach one of ordinary skill in the art how to make or use the invention. The Examiner, however, has failed to present any evidence or reasoning to rebut the presumption of adequate written description. This lack of evidence or reasoning clearly establishes that the Examiner failed to establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would

allegedly not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. Therefore, without the Examiner providing further evidence, Applicant respectfully submits that the rejection is improper. Further, in the interest of expediting prosecution in this case, Applicant respectfully submits that the pending claims are fully supported by the specification.

If the Examiner continues to maintain such a rejection, Applicant respectfully requests that the Examiner provide evidence or reasoning that allegedly establishes a lack of adequate written description. In any case, Applicant respectfully requests that the rejection be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 1-3, 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Publication No. 2002/0136298 to Anantharamu et al. (hereinafter “Anantharamu”) in view of United States Publication No. 2005/0271072 to Anderson et al. (hereinafter “Anderson”). Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the rejection.

As recited above, Applicant respectfully submits that allowable dependent claim 8 has been canceled and the limitations previously recited, in relevant part, in dependent claim 8 have been incorporated into amended independent 1. Therefore, Applicant respectfully submits that amended independent claim 1, and all claims depending directly or indirectly therefrom, define over the cited references and are in condition for allowance. More particularly, as recited at least on page 5 of the Office Action, Applicant respectfully submits that the cited references fail to teach at least comparing the current data sample to a particular data pattern and if the current data sample does not match the particular data pattern, incrementing the current pointer and returning to comparing the current data sample as recited, in relevant part, in amended independent claim 1. Therefore, claim 1 defines over the cited references.

Absence from the cited references of the above-mentioned claim elements negates obviousness. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claim 1. Furthermore, Applicant respectfully requests

Appl. No. 10/563,034
Response Dated October 11, 2011
Reply to Office Action of July 11, 2011

Docket No.: P22105/1020P22105
Examiner: Insa Sadio
TC/A.U. 2629

withdrawal of the obviousness rejection with respect to claims 2, 3, 6, 7, 9 and 10, which depend from claim 1, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

It is believed that claims 1-3, 6-7, 9-10 and 19-23 are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicants do not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the limitations of the independent claims and dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the Deposit Account No. 50-4238.

Respectfully submitted,
KACVINSKY DAISAK PLLC

/Andrew H. Aurand/

Andrew H. Aurand, Reg. No. 61,875
Under 37 CFR 1.34(a)

Dated: October 11, 2011

KACVINSKY DAISAK PLLC
4500 Brooktree Road, Suite 302
Wexford, PA 15090
(724) 364-3245